

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 175 of 1999

and

CIVIL APPLICATION NO. 12362 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MANUBHAI MANILAL PATEL

Versus

DISTRICT PRIMARY EDUCATION OFFICER

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Appearance:

MR KB PUJARA for Petitioner/applicant

MR HS MUNSHAW for Respondents/opponents

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 01/12/1999

ORAL JUDGEMENT

There is no dispute between the parties that the amount of salary has not been paid to the petitioner for the period of four months, i.e. from 19th November 1998 to 11th April 1999. The case of the petitioner is that he did report at the new place of posting i.e. Vadasma Kanya Shala, but somebody else was working there and, therefore, he was not allowed to join. The respondents

have submitted that the petitioner is not entitled for the salary as he never worked for this period. In the facts of this case, it appears that when the petitioner was not allowed to join at Vadasma Kanya Shala, on 19.11.1998 itself he reported before the Distt.Primary Education Officer, Mehsana vide Ann.F dated 19.11.1998 for suitable posting, nay, he regularly attended the office of respondent no.1, but was not given any posting despite his request. Therefore, in the opinion of this Court, there is no question of depriving the petitioner of his salary for the period in question merely because the posting was not given to him and he was kept awaiting the posting orders.

2. In case the proper posting is not given and an employee is not allowed to work, the salary for such period cannot be denied as it would be a case of not issuing the posting orders and then raising a grievance that the petitioner did not work. In the facts of the present case, the respondents are estopped from raising such a grievance against the petitioner, because the respondent no.1 himself had failed to issue posting orders while petitioners had immediately approached him on 19.11.1998 itself and did attend his office regularly thereafter. It is rather a case of not giving any work to the petitioner, and for this if the petitioner is to be paid the salary, the respondents have to thank themselves.

3. In the facts and circumstances of this case, it is directed that the due amount of salary for the period as aforesaid shall be paid to the petitioner within a period of one month from the date the certified copy of this order is produced. In this view of the matter, the petition succeeds. The petitioner shall be entitled to get the salary for the period on and from 19th November 1998 to 11th April 1999. This Special Civil Application is accordingly allowed. Rule is made absolute. No order as to costs. Direct service is permitted.

3. In view of the orders passed in the main matter, i.e. Special Civil Application No.175 of 1999, no orders are required to be passed in this Civil Application. This Civil Application stands disposed of accordingly.

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Sreeram.